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September 9, 2021

**Via ECF**

The Honorable Nicholas G. Garaufis  
U.S. District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: Ortega v. Yeghoyan, et al.**  
21 cv 01125 (NGG-CLP)  
Request to Join Co-Defendant's Motion to Dismiss

Dear Judge Garaufis:

This office represents Defendant Ruben Yeghoyan in the above-captioned matter.

I am writing this letter motion to request, for the purposes of judicial economy, leave to allow Defendant Ruben Yeghoyan to join Defendant Champagne Room, BK Inc.'s (hereinafter "Corporate Defendant") Pre-Motion Conference and Motion to Dismiss, for the reasons set forth in Corporate Defendant's Letter Motion (Dkt. No. 27).

Although Defendant Yeghoyan has filed an answer in this action on March 29, 2021, we respectfully request that Mr. Yeghoyan be permitted to join the Corporate Defendant's Motion to Dismiss as a Motion for Judgement on the Pleadings pursuant to Fed. R. Civ. P. 12(c). As the Court is aware, filing a motion to dismiss for failure to state a claim filed after the close of pleadings is permitted as a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c). Patel v. Contemporary Classics of Beverly Hills, 259 F.3d 123, 126 (2d Cir. 2001).

In reviewing the Corporate Defendant's request for a Pre-Motion Conference (Dkt. No. 27), two defenses raised by the Corporate Defendant, if meritorious, would apply to Defendant Yeghoyan in his individual capacity.

First, neither of the Plaintiff's Title VII nor NYSHRL gender discrimination claims, provide a suitable comparator. See Graham v. Long Island R.R., 230 F.3d 34, 39 (2d Cir. 2000) (Plaintiff must raise inference of discrimination by identifying comparators "similarly situated in all material respects.")

Second, Plaintiff's causes of action two through seven are duplicitous of the first cause of action as they are based on the same set of facts and are not pleaded in the alternative. Figueroa v. RSquared NY, Inc., 89 F. Supp. 3d 484, 487 (E.D.N.Y. 2015).

Plaintiff and Defendant Yeghoyan have exchanged Rule 26 disclosures, however no further discovery has been completed. Responses to Interrogatories and Requests for Document Production are due on October 6, 2021, and the next conference is scheduled for November 9, 2021, before Chief Magistrate Judge Cheryl Pollak. To avoid expenditure of the Court's time and unnecessary additional litigation costs, we respectfully request that all discovery deadlines be stayed for 14 days after receipt of the Court's decision on the contemplated Fed. R. Civ. P. 12(c) motion.

For the sake a brevity, Defendant Yeghoyan reserves the right to more fully brief the Court for the rationale during the Pre-Motion conference, and in his upcoming Motion to Dismiss.

Respectfully Submitted,

s/ Elena Fast

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*cc: All parties of record via ECF*